IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.26 OF 1999

IN

CHAMBER SUMMONS NO.343 OF 1997

IN

EXECUTION APPLICATION NO.405 OF 1994

IN

SUIT NO.2774 OF 1984.

Corporation Bank. ... Petitioner.

vs.

1. The India Overseas Bank. & others. .... Respondents.

Mr.S.Shetye i/b. Kanga & Co. for Petitioner.

Mr.Doijode, for Respondent no.1.

Mr.P.V.Shah, for Respondent no.9.

CORAM: D.K.DESHMUKH,J.

DATED: 21st December, 2005

P.C.:-

1. This is an application for review of the order dated 19th December,1997. The order was passed in following circumstances.:-

The present Respondent no.1 Indian Overseas Bank had a money decree against the present Respondent no.2-Esquire Video Film Services Pvt. Ltd. That decree was put to execution. The property of Respondent no.2 i.e. a flat was attached. After the attachment, that flat was ordered to be sold. The flat was sold on 3.12.1997. It appears that the present applicant-Corporation Bank also had obtained money decree against Respondent no.2. Therefore, when the sale of the property was advertised, before the sale was conducted the present applicant had gone to the Lawyer appearing for the Decree holder Indian Overseas Bank and told him that the present applicant holds a decree against the same judgment debtor and they have filed an application for execution of their decree. It appears that thereafter, the property was sold, the matter came up before the Court for distribution. The order dated 19.12.1997 was passed by the Court for the purpose of distribution of sale proceeds. That order was passed by consent. By that order the decree holder was directed to be paid the amount of decree. The Co-operative housing society where the flat was situated were directed to be paid their dues. The Sheriff was directed to be paid for the sale expenses incurred. The balance amount that remained from the sale proceeds was to be paid to the judgment debtor who was the owner of the property. At his request the Court directed that the balance amount be paid to the present Respondent no.9 -Mitsui Osk Manning Services SA.

2. According to the present applicant this order is to be reviewed because the decree holder Indian Overseas Bank did not disclose to the Court when the order dated 19.12.1997 was made, that there is a decree passed by the Court in favour of the present applicant and against the same judgment debtor. In my opinion, there is no such duty cast on the decree holder Indian Overseas Bank to disclose that there is a money decree passed in favour of the applicant and against the same judgment debtor. It is obvious that the applicant had come to know that the property of the judgment debtor has been attached and it is to be sold on 3.12.1997. Therefore, it was open to the present applicant to move either for attachment of the same property or for attachment of the sale proceeds to satisfy the decree of the applicant. The applicant did nothing and therefore, I do not see that the Court has committed any error in directing payment of balance amount to the respondent no.9. Really speaking in the absence of any attachment from the present applicant the Court would have been justified in directing payment of that amount to the judgment debtor who was the owner of the property. But the parties informed the Court that instead of the judgment debtor the amount should be paid to the present respondent no.9. I do not see any ground made out by the applicant for review of the order dated 19.12.1997 which in any case was the order passed by consent of the parties and therefore, there is

no question of review of that order. The petition is therefore, disposed of.